IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 18069 of 2004
Date of decision : 3-11-2006

Municipal Corporation, Patiala, through its
Asstt. Commissioner. … Petitioner

Versus

Swaranjit Singh and another … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Vinish Singla, Advocate,
for the petitioner

Mr. Vikas Singh, Adocate,
for respondent No.1

…

ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 17.3.2004 Annexure P-4, ordering reinstatement of respondent-workman with continuity of service along with 50 per cent back wages from the date of demand notice.

Respondent No.1-workman was appointed as Beldar from 1.2.1990 to 28.2.1991 by the petitioner-department. His termination from service with effect from 1.3.1991 gave rise to an industrial dispute. He alleged that his services were terminated illegally without any notice or

any compensation in lieu thereof. On the contrary, the stand of the department was that the workman had not worked for 240 days in a calendar year preceding the date of his termination. It was pleaded that the present reference was not maintainable on the principle of res-judicata as an earlier reference, which he had filed, was withdrawn by him.

In support of their respective case, evidence was led by the parties.

The learned Labour Court after holding that the services of the workman were terminated illegally in violation of Section 25-F of the Industrial Disputes Act,1947, (in short, the Act), passed the impugned award in the manner indicated above. Hence, the present writ petition by the petitioner-department.

Upon notice of motion, respondent No.1- workman has filed written statement justifying the impugned award, besides praying for dismissal of the writ petition.

We have heard the learned counsel for the parties.

The question arises as to whether the respondent-workman had completed 240 days preceding 12 calendar months from the date of termination. The case of the respondent-workman is that he continuously worked from 1.2.1990 till his services were terminated on 28.2.1991. Petitioner-department could not controvert the same by any cogent evidence; rather, a bare perusal of the impugned award shows that the petitioner-department itself moved an application(Exhibit R-1 before the Labour Court) for production of muster-rolls with effect from 1.2.1990 to 28.2.1991. That application was allowed with a direction for summoning of the record for the date fixed. A reading of the impugned award shows that the petitioner-department had only produced muster-rolls from August 1990 to February 1991 and had not produced the muster-rolls from 1.2.1990 to July 1990 without there being any explanation. This necessarily led the learned Labour Court to draw an adverse inference against the petitioner-department and to hold that the respondent-workman had completed 240 days preceding 12 calendar months from the date of termination. Thus, on account of non-compliance of Section 25-F of the Industrial Disputes

Act,1947 (in short the Act), termination of the workman was rightly held to be illegal and not sustainable. Nothing has been impressed upon us to take any contrary view.

Learned counsel for the petitioner has further contended that the respondent-workman raised the industrial dispute after about five years of his termination which is sufficient to non-suit him. No doubt, the conduct of the workman in raising the dispute after a period of five years can be considered to be a relevant factor in refusing to grant any relief to him; however, in the instant case, a bare perusal of the award shows that respondent-workman had served demand notice in the year 1991 itself, in which reference was made to the Labour Court. However, in the year 1996, he had withdrawn the afore-mentioned claim statement and the Labour Court had accorded permission to the workman with liberty to file a fresh one, which he re-agitated in the same year i.e. 1996. Therefore, it can be safely concluded that the respondent-workman had not slept over the matter from the date of termination of his services; rather had been pursuing the same. Therefore, it cannot be said that in this case, the dispute ceased to exist after some time. In this context, reference can be made to a dicta of the Hon'ble Supreme Court in Sapan Kumar Pandit v. U.P.State Electricity Board and others, 2001(6) SCC 222 wherein it has been held that when the dispute had been kept alive, it does not cause the same to wane into total eclipse.

Learned counsel for the petitioner has next argued that the respondent-workman has not adequately proved that he remained idle during the interregnum and as such, grant of back-wages by the Labour Court to the extent of 50 per cent is excessive and has referred to a judgment of the Hon'ble Supreme Court in G.M. Haryana Roadways v. Rudhan Singh, 2005(5) SCC 591. In Rudhan Singh's case(supra), one of the important factors for the denial of back-wages was the length of service which was less than a year. However, this is not the position here. Respondent-workman had worked for more than one year. No doubt, he had stated that he had been plying rickshaw but the same was only to sustain himself and family members consisting of five children. There is nothing on

record to show that he was gainfully employed in any industrial establishment during the interregnum.

In Noida and another v. Hari Dutt, 2006 SCC (L&S) 1083, the Labour Court had directed payment of back-wages of 50 per cent which were raised to full back wages by the High Court. The Hon'ble Supreme Court set aside the decision of the High Court and confirmed the award of the Labour Court.

In Allahabad Jal Sansthan v. Daya Shankar Rai and another, 2005(5) SCC-124, it has been held by the Hon'ble Supreme Court that it is necessary to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered, but a golden mean may be arrived at, and opined that interest of justice would be subserved if the workman is awarded 50 per cent of back-wages. Therefore, applying the norms laid down by the Hon'ble Apex Court, the grant of 50 per cent back-wages from the date of demand notice in this case is not excessive in any manner.

No other point has been urged.

In view of what has been stated above, we are of the opinion that the learned Labour Court has rightly answered the reference. We do not find any infirmity with the award passed by the Labour Court which is just and reasoned. Accordingly, the petition being without any merit is dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 3, 2006
JS